

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
STARROW ENTERPRISES,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB Nos.: 85-160, 85-192,
and 85-228

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of three Notices of Violation and three civil penalties totaling \$1,750 for allowing the emission of an objectionable odor from appellant's plant located at 4611 South 134th Place, in Seattle, Washington, on June 28, August 6, and October 4, 1985, came on for hearing before the Pollution Control Hearings Board on December 13, 1985, in Seattle, Washington. Seated for and as the Board were Lawrence J. Faulk (presiding), Wick Dufford, and Gayle Rothrock. The proceedings were officially reported by Lynn Tarry of Calmes and Associates. Respondent elected a formal hearing pursuant

1 to RCW 43.21B.230.

2 Appellant was represented by Floyd Darrow, owner of Starrow
3 Enterprises. Respondent Agency was represented by its attorney Keith
4 D. McGoffin.

5 Witnesses were sworn and testified. Exhibits were examined. From
6 the testimony heard and exhibits examined, the Board makes these

7 FINDINGS OF FACT

8 I

9 Appellant Starrow Enterprises is a manufacturer of cultured marble
10 and onyx products. In order to manufacture these products, the
11 appellant mixes calcium carbonate with a resin and casts the mixture
12 in molds. The product is then sealed with a Gel-Coat.

13 II

14 Respondent PSAPCA is a municipal corporation with the
15 responsibility for conducting a program of air pollution prevention
16 and control in a multi-county area which includes the site of
17 appellant's plant.

18 PSAPCA, pursuant to RCW 43.21B.260 has filed with this Board a
19 certified copy of its Regulation I (and all amendments thereto) which
20 is noticed.

21 III

22 In the morning of June 28, 1985, PSAPCA received a complaint from
23 a neighbor couple who live and maintain a business across the street
24 from appellant's plant, about 200 feet northwest of the discharge
25 point for emissions from the Gel-Coat spray booth. Respondent

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1 Agency's inspector that morning visited and spoke with the
2 complainants and personally sniffed and detected a noticeable and
3 distinct styrene (vinyl benzene) odor with unpleasant characteristics.

4 To the complainants the effect was "nauseating" and smelled like
5 fiberglass. The complainants experienced eye irritation, loss of
6 sleep and found the odor highly objectionable. They also stated their
7 families have experienced unreasonable interference with the enjoyment
8 of the outdoors and their property.

9 In testimony relating to the event, the complainants stated their
10 ability to distinguish a fiberglass-like smell from other odors.

11 The inspector, during his visit, rated the odor as equivalent of a
12 "2" on an odor rating scale ranging from 0 to 4, and delineated as
13 illustrated:

14 0--No detectable odor

15 1--Odor barely detectable

16 2--Odor distinct and definite, any unpleasant characteristics
17 recognizable

18 3--Odor strong enough to cause attempts at avoidance

19 4--Odor overpowering, intolerable for any appreciable time.

20 This rating scale is used by PSAPCA not as a regulatory standard, but
21 as a shorthand method for preserving impressions for evidentiary
22 purposes.

23 IV

24 On June 28, 1985, Notice of Violation (No. 20914) was issued to
25 Starrow Enterprises for violating Section 9.11(a) of PSAPCA

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1 Regulation I.

2 V

3 On July 31, 1985, Notice and Order of Civil Penalty No. 6314 was
4 sent to appellant assessing a penalty of \$250 for allegedly violating
5 PSAPCA Regulation, Section 9.11(a) and WAC 173-400-040(5) on June 28,
6 1985. From this, appellant appealed to this Board on August 16, 1985,
7 the appeal becoming our cause number PCHB No. 85-160.

8 VI

9 On the morning of August 6, 1985, again acting on a complaint,
10 respondent Agency's inspector visited the neighborhood adjacent to
11 appellant's plant and spoke with the same complainants. The inspector
12 independently noted a distinct styrene (vinylbenzene) odor which he
13 concluded, could induce nausea, curbed appetite and breathing, nose
14 and throat irritation, and generally offend the senses of smell and
15 taste. He rated the odor at "2."

16 By affidavit and testimony the complainants stated that the odor
17 of styrene on this occasion caused eye and nose irritation, nausea and
18 loss of sleep. They found it a highly objectionable interference with
19 their enjoyment of life and property. Finally, they indicated that
20 customers entering their place of business often complain of odor.

21 VII

22 On August 6, 1985, Notice of Violation (No. 20917) was issued to
23 Starrow Enterprises for violating Section 9.11(a) of PSAPCA Regulation
24 I.

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VIII

On September 16, 1985, Notice and Order of Civil Penalty No. 6329 was sent to appellant assessing a penalty of \$500 for allegedly violating PSAPCA Regulation, Section 9.11(a) and WAC 173-400-040(5) on August 6, 1985. From this, appellant appealed to this Board on October 4, 1985, the appeal becoming our cause number PCHB No. 85-192.

IX

On the morning of October 9, 1985, once more acting on a complaint, respondent Agency's inspector visited the neighborhood adjacent to appellant's plant and spoke with the same complainants. The inspector independently noted a distinct styrene (vinylbenzene) odor which he concluded, could induce nausea, curbed appetite and breathing, nose and throat irritation, and generally offend the senses of smell and taste. He rated the odor at "2."

By affidavit and testimony the complainants stated that the odor of styrene on this occasion produced physical effects like those experienced on other occasions and was highly objectionable.

X

On October 9, 1985, Notice of Violation (No. 021201) was issued to Starrow Enterprises for violating Section 9.11(a) of PSAPCA Regulation I.

XI

On October 30, 1985, Notice and Order of Civil Penalty No. 6345 was sent to appellant assessing a penalty of \$1,000 for allegedly violating PSAPCA Regulation, Section 9.11(a) and WAC 173-400-040(5) on

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1 October 9, 1985. From this, appellant appealed to this Board on
2 November 18, 1985, the appeal becoming our cause number PCHB No.
3 85-228.

4 XII

5 PSAPCA's inspector via his affidavit indicated that styrene has an
6 odor threshold of 0.05 to 0.08 ppm which indicates that it is
7 detectable in very small concentrations. The threshold limit value
8 (TLV) of styrene is 50 ppm and refers to airborne concentrations under
9 which it is believed that nearly all persons may be repeatedly exposed
10 day after day without adverse effects (similar TLV as carbon
11 monoxide). Styrene is known as a cause of eye and nasal irritation,
12 violent itching of the eyes, lachrymation, and severe human eye
13 injury. Its toxic effects are usually transient.

14 XIII

15 The appellant in these cases does not contend that the effects
16 experienced on the dates in question did not occur. Neither did the
17 appellant show that any of the complainants nor inspector possessed
18 idiosyncratic sensibilities.

19 The appellant acknowledged that his manufacturing operation
20 occasionally generates unpleasant odors. But, on the dates in
21 question he attributed the smell to fibreglassing operations at a
22 machine shop in the neighborhood. PSAPCA's inspector stated that his
23 personal investigations on the dates in question convinced him that
24 appellant's plant was the odor source.

25 The Board finds on the record before it, that the odors complained
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1 of emanated from appellant's plant and were, in fact, offensive to
2 persons of normal sensitivity; and that they did, in fact,
3 unreasonably interfere with the enjoyment of good health, life, and
4 property on each of the dates involved here.

5 XIV

6 Appellant testified that he has investigated various systems for
7 filtering the Gel-Coat emissions but has not, since receipt of the
8 violation notices and penalties at issue, ordered or installed
9 anything to upgrade his system.

10 XV

11 Any Conclusion of Law which is deemed a Finding of Fact is hereby
12 adopted as such.

13 From these Findings of Fact, the Board comes to these

14 CONCLUSIONS OF LAW

15 I

16 The Board has jurisdiction over these persons and these matters
17 Chapters 43.21 and 70.94 RCW.

18 II

19 Under terms of Section 9.11(a) of PSAPCA Regulation, certain air
20 emissions are prohibited. This section reads as follows:

21 (a) It shall be unlawful for any person to
22 cause or allow the emission of any air contaminant
23 in sufficient quantities and of such
24 characteristics and duration as is, or is likely to
be, injurious to human health, plant or animal
life, or property, or which unreasonably interferes
with enjoyment of life and property.

25 This formulation parallels the definition of "air pollution" contained

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1 in the State Clean Air Act at RCW 70.94.030(2). The language is
2 similar to the traditional definition of a nuisance. See RCW 7.48.010.

3 III

4 On June 28, 1985, August 6, 1985, and October 9, 1985, odors
5 emanating from appellant's manufacturing plant wafted onto a nearby
6 residence and had such effects on human health and the enjoyment of
7 life and property as to violate Section 9.11(a) of respondent's
8 Regulation I.

9 IV

10 The notices and orders of civil of penalty at issue assert
11 violations of both Section 9.11(a) of PSAPCA Regulation I and WAC
12 173-400-040(5). Since we here decide that Section 9.11(a) was
13 violated, we need not consider WAC 173-400-040(5).

14 V

15 PSAPCA's Regulation I and the Washington State Clean Air Act
16 provide for a maximum civil penalty of \$1,000 per day in occurrences of
17 this kind. In consideration of all the facts and circumstances, we
18 conclude the civil penalties levied in these three cases were not
19 excessive.

20 VI

21 The purpose of the civil penalty is not primarily punitive, but
22 rather to influence behavior. The need to promote compliance among
23 members of the public generally supports the imposition of monetary
24 sanctions. However, if by suspending all or a portion of penalty,
25 compliance can be achieved, then the objectives of the law will have

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1 been served. We conclude that the Order set forth below is
2 appropriate.

3 VII

4 Any Finding of Fact which is deemed a Conclusion of Law is hereby
5 adopted as such.

6 From these Conclusions of Law the Board enters this
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ORDER

Notice and Order of Civil Penalty Numbers 6314, 6329, and 6345 issued by PSAPCA are affirmed; provided however that \$900 is suspended on condition that appellant satisfy PSAPCA by June 30, 1986, that it has in place an odor control system which meets the statutory formula of "all known available and reasonable means of emission control."

DONE this 21st day of December, 1985.

POLLUTION CONTROL HEARINGS BOARD

Lawrence S. Faulk 12/30/85
LAWRENCE S. FAULK, Chairman

Gayle Rothrock
GAYLE ROTHROCK, Vice Chairman

Wick Dufford
WICK DUFFORD, Lawyer Member